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OFFICE OF PETITIONS

In re Application of :
Francisco Rojo Lulic :
Application No. 10/733,602 : DECISION ON PETITION
Filed: December 11, 2003 : UNDER 37 CFR 1.313(a)
Attorney Docket No. 870-003-166 :

This is a decision on the petition under 37 CFR 1.313(a), filed October 11, 2005, to withdraw the above-identified application from issue or, alternatively, to request continued examination in accordance with 37 CFR 1.114.

The petition under 37 CFR 1.313(a) is DISMISSED as moot for the reasons stated below.

The request for continued examination is GRANTED.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due were mailed on July 12, 2005. Accordingly, the issue and publication fees were due on or before October 12, 2005 to avoid the abandonment of the application. The issue fee has not to date been received.

Petitioner requests that the present application be withdrawn from issue because "assignee of the present application does not find the examiner's amendment to claim 9 acceptable." Alternatively, petitioner requests continued examination in accordance with 37 CFR 1.114 and authorizes the fee to be charged to his deposit account.

MPEP, Section 706.07(h), states:

If a submission is accompanied by a "conditional" RCE and payment of the RCE fee under 37 CFR 1.17(e) (i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered), the Office will treat the "conditional" RCE and payment

as if an RCE and payment of the fee set forth in 37 CFR 1.17(e) had been filed.

MPPEP, Section 706.07(h), under "After Allowance or Quayle Action," states, in part:

* * * if an applicant files an RCE with the fee set forth in 37 CFR 1.17(e) and a submission in an application which has been allowed, prosecution will be reopened. If the issue fee has been paid, however, payment of the fee for an RCE and a submission without a petition under 37 CFR 1.313 to withdraw the application from issue will not avoid issuance of the application as a patent. If an RCE (with the fee and a submission) is filed in an allowed application prior to payment of the issue fee, a petition under 37 CFR 1.313 to withdraw the application from issue is not required [emphasis added].

Therefore, the Office will treat the "Contingent Request for R.C.E." embodied in the petition as if an RCE and payment of the fee set forth in 37 CFR 1.17(e) had been filed. Further, the submission requirement is met by the arguments against the examiner's amendment to claim 9.¹ As authorized, the \$790 RCE fee will be charged to petitioner's deposit account.

In view of the above, the submission of a petition to withdraw from issue under 37 CFR 1.313(a) is unnecessary and is dismissed as involving a moot issue.

Any inquiries regarding this decision should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2834 for processing the RCE and consideration of the submission, both of which are embodied in the petition under 37 CFR 1.313(a).


Frances Hicks
Petitions Examiner
Office of Petitions

¹ Petitioner should, in the future, comply with the provisions of 37 CFR 1.4(c), which states: "Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects."